IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5107 OF 2005
IN
CRIMINAL APPEAL NO.646 OF 2005
WITH
CRIMINAL APPEAL NO.646 OF 2005

S.P.Brothers
through its partner
Mr.Sharad Kakadia .. Appellant.
Vs.
1.M/s.Prakash Enterprises
and Others .. Respondents.

WITH

CRIMINAL APPLICATION NO.5108 OF 2005
IN
CRIMINAL APPEAL NO.647 OF 2005
WITH
CRIMINAL APPEAL NO.647 OF 2005

S.P.Brothers
through its partner
Mr.Sharad Kakadia .. Appellant.
Vs.
1.M/s.Prakash Enterprises
and Others .. Respondents.

WITH

CRIMINAL APPLICATION NO.5109 OF 2005
IN
CRIMINAL APPEAL NO.648 OF 2005
WITH
CRIMINAL APPEAL NO.648 OF 2005

S.P.Brothers
through its partner
Mr.Sharad Kakadia .. Appellant.
Vs.
1.M/s.Prakash Enterprises
and Others .. Respondents.

WITH

CRIMINAL APPLICATION NO.5110 OF 2005
IN
CRIMINAL APPEAL NO.649 OF 2005
WITH
CRIMINAL APPEAL NO.649 OF 2005

S.P.Brothers
through its partner
Mr.Sharad Kakadia .. Appellant.
Vs.
1.M/s.Prakash Enterprises
and Others .. Respondents.

Mr.S.N.Chimade for the appellants.
Mr.P.A.Pol A.P.P. for the State.

CORAM : D.B.BHOSALE, J.
DATED : 12TH JULY, 2006

P.C.:

. Heard learned counsel for the appellants and learned A.P.P. for the State.

2. Leave to appeal is granted. Appeals admitted. By consent taken up for final hearing.

3. This group of four aplications under section 378(4) of the Code of Criminal Procedure is filed seeking leave to appeal against the order of dismissal dated 6.6.2005 of all the four complaints, and consequently acquitting all the respondents-accused of the offence under section 138 of the Negotiable Instruments Act. The parties in all the four applications are same. On 14th June, 2006 when all the leave applications with memo of appeal were placed before this court the applicants were directed to give fresh notice to the respondents-accused making it

clear that the applications seeking leave to appeal under section 378 of the Code and the appeals will be disposed of finally at the stage of admission. The applicant has, accordingly, filed an affidavit and proof of service. Despite service of notice, in leave applications and in the appeals, none appear for the respondents. In the circumstances I heard Mr.Chimade, learned counsel for the applicants and the learned A.P.P. for the State. Since the parties, in all the applications are same, the averments in the complaints are similar, they are being disposed of by this order.

4. The appeals are directed against the order dated 6.6.2005 by which the complaints, were dismissed on the ground that "none was present for the complainant till 5.40 p.m. and that no steps were taken". From the order it is obvious that it was passed under section 256 of the Code. All the four complaints were filed by the applicants under section 138 read with 141 of the Negotiable Instruments Act. The facts in detail need not be stated for deciding these appeals. Suffice it to say that the complaints were filed in May 2001, the process against all the accused was issued on 30th June, 2001 and it was admittedly served on them. The petitioner has placed on record the proceedings sheet (roznama) indicating how the case progressed right from the first date till

the complaints came to be dismissed on 6.6.2005. The dates in all the four complaints are same. It would be advantageous to reproduce the roznama in one of the complaints, which reads thus:

1. 31/05/2001
C.C.No.1055/S/03
1333/M/2001
C.P.Adv.P.
V. recorded
Adj. for orders
30/6/01

2. 30/6/01
Issue process summons
against Accused
r/on 11/10/01

3. 11/10/01
Complainant pt with Adv.
Accused exempted for the day
Adj. to 18/03/02

4. 18/03/02
Board discharged adj. to 9/9/2002
Case transferred to 2nd Court as
Per office orders 18/2002
Dt.30/03/2002
Dt. 9/5/2002

5. 9/9/2002
Case transferred from 20th Court
This Court is vacant
The board is discharged
The case is adj. to 31/1/2003

6. 31/1/2003
M.M.6th Court
I/C/ 2nd Court
The Court is vacant
Board is discharged
This case is adj. to 12/6/03.

7. 17/6/03
as per the order of the Ld.
C.M.M. Esplanade Mumbai
Vide No.257/03 dt.12/03/03
The said case is transferred from
2nd Court to 20th Court, Mazgaon

adj. to 20/7/03.

8. 17/7/2003
Case is received from as per
C.M.M. order 257/03 Dt.12/03/2003
Both parties are absent issue notice to
Both parties to appear before this Court.
Adj. to 20/10/03.

9. 20/10/03
Complt. and Adv. Absent
A ab
Court is vacant
Adj. to 20/2/04
20/10/03
I/C 2nd Court.

10. 11/06/04 Roznama
discontinued
Ld.M.M. on leave
Complt. pt. Adv. pt.
Adj. till 13/07/04
Sd.
M.M.

11. 13/7/04
Ld.M.M is on leave
Board discharged
Adj. till 17/8/04
Sd/-
M.M

12. 17/8/04
Ld.M.M. is on leave
Adj. Leave till 30/10/04
Sd.M.M.
I/C 20th Court.

13. 30/10/04
Ld.M.M is on leave
Adj. to 7/3/05
Sd
30/10/05

14. 7/3/05
Ld.M.M. is on leave
Case adj. to 6/6/05
Sd.
07/03/05
I/C 6th Court

15. 6/6/05
Complainant and Adv. absent

Complaint dismissed.
Order passed on the complaint 6/6/05

5. It is evident from the aforesaid roznama that the complainant and his advocate were absent only on three occasions i.e. 17th July, 2003, 20th October, 2003 and ofcourse on the date on which the impugned order was passed. Though 20th October, 2003 the complainant and his advocate were absent, the court was also vacant and hence the case was adjourned. On 17.7.2003, both the sides were absent and hence notice was issued to both. After 11th June, 2004 till 6th June, 2005 the case was adjourned from time to time since the learned Magistrate was on leave. Mr.Chimade, learned counsel for the applicants states that form 11th June, 2004 to 7th March, 2005 on all the dates the complainant and his advocate were keeping watch on the cases and the bench clerk used to discharge the board in view of the fact that the learned Magistrate was on leave. Considering the proceedings sheet, in my opinion, the learned Magistrate ought to have given atleast one opportunity to the complainant and his advocate on resumption after long absence. It also appears that the applicant promptly approached this court, after he came to know about dismissal of the complaints for his non appearance on 6th June, 2005. Considering the

overall facts and circumstances of the case, in my opinion, the petitioner has shown sufficient cause for quashing and setting aside the impugned order. Hence I pass the following order:

. The impugned orders in all the appeals are set aside. All the complaints are restored to file. The learned Magistrate shall decide the complaints on merits in accordance of law as expeditiously as possible and preferrably within a period of one year from the date of receipt of this order. The appeals are, accordingly, allowed.

(D.B.Bhosale, J.)